S.B. Civil Misc. Appeal No.601/2002
Karnail Singh
vs
Ganga Ram

DATE OF ORDER : - 4.8.2005

HON'BLE MR. PRAKASH TATIA,J.

Mr.HS Sandhu, for the appellant.
Mr.NL Joshi, for the respondent.

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Heard learned counsel for the parties.

The appeal is against the order dated 8.8.2002 passed by the learned District Judge,Hanumangarh by which the application filed by the appellant under Order 9 Rule 13 CPC was dismissed by the trial court.

Brief facts of the case are that the suit for specific performance of contract was decreed by the trial court against the appellant on 25.2.2002. The defendant appellant immediately when he came to know about the decree dated 25.2.2002 submitted an application for setting aside of the ex-parte decree on 9th March, 2002. The application was rejected by the trial court vide order dated 25.2.2002 on the ground that the defendant put his appearance through his advocate and, thereafter on 11th May, 2002 neither the defendant nor his counsel appeared before the court and, therefore, the court passed the ex-parte order against the defendant-appellant and in view of the above after

taking note of the above fact, the trial court dismissed the application of the appellant-defendant after rejecting the appellants plea that appellant's advocate did not inform the appellant-defendant about the date of the suit.

Looking to the facts of the case, particularly that the suit for specific performance of contract has been filed by the plaintiff and in case the decree under challenge shall allow to stand, the appellant will be deprived of his property. The facts peculiar are that the agreement was alleged to be dated 16th June, 1995 and, thereafter, a notice was given to the defendant on 1st June, 1996 by the plaintiff and, thereafter, on 22nd July, 1997 and suit was filed in the year 1999. Therefore, in the interest of justice opportunity is given to the defendant-appellant to contest the suit on payment of cost of RS.5,000/- to the plaintiff.

Hence, the appeal of the appellant is allowed and the order dated 8.8.2002 is set aside on payment of cost of Rs.5,000/-. Both the parties are directed to remain present before the trial court on 1st Sept., 2005.

(Prakash Tatia), J.

c.p.goyal/-